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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,038	02/26/2002	Vincent J. Schiavone	P24,784-A USA	8437

7590

09/30/2005

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EXAMINER

JEAN GILLES, JUDE

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,038

Applicant(s)

SCHIAVONE ET AL.

Examiner

Jude J. Jean-Gilles

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims.

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 05/09/2004, 11/21/03, 10/01/02

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is responsive to communication filed on 02/26/2002. Claimed priority is granted from provisional application No: 60271521 with a priority date of 02/26/2001. Preliminary amendment submitted on 02/13/2004 has cancelled claim 7, and amended claims 1, 2, 5, and 6. New claims 8-87 are added to this application. Claims 1-87 are pending in this office action.

### ***Information Disclosure Statement***

1. The references listed on the Information Disclosure Statement submitted on 05/09/2005 have been considered by the examiner (see attached PTO-1449A).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-16, 18, 21-38, and 44-87** are rejected under 35 U.S.C. 102(e) as being anticipated by Geiger et al (Geiger), Patent No. 6,073,142.

Regarding **claim 1**, Geiger discloses a method for controlling distribution of electronic mail messages communicated from a sender to a receiver via a communications network, the method comprising the steps of:

- (a) receiving a message intended for delivery to a recipient (col. 5, lines 58-67; col. 6, lines 15-50);
- (b) identifying a priority level corresponding to the message (column 10, lines 44-62);
- (c) identifying a processing rule for the identified priority level (column 10, lines 44-62; column 20, lines 4-20); and
- (d) delivering the message to the intended recipient in accordance with the processing rule (column 10, lines 44-62; column 20, lines 4-20; column 20, lines 21-58).

Regarding **claim 2**, Geiger discloses the method of claim 1, wherein step (b) is comprises reading data from a header of the message (column 17, lines 16-43).

Regarding **claim 3**, Geiger discloses the method of claim 1, wherein step (c) is performed by referencing a rule base (column 10, lines 44-62; column 20, lines 4-20).

Regarding **claim 4**, Geiger discloses the method of claim 1, wherein steps (a) through (d) are performed at a client device, the method further comprising the step of:

- (e) transmitting to a network device a preference for receiving messages having the priority level (column 10, lines 32-62).

Regarding **claim 5**, Geiger discloses the method of claim 1, wherein step (b) comprises the steps of:

- (e) identifying a communications path of the message (fig. 13; column 20, lines 1-58);

Art Unit: 2143

- (f) sampling a plurality of messages sharing the path (fig. 13; column 20, lines 1-58);
- (g) determining a value for a sender metric (column 11, lines 12-45; column 25, lines 39-67);
- (h) identifying a the priority level from a rule base for the determined value (column 11, lines 12-45; column 25, lines 39; and
- (i) assigning the priority level identified in step (h) to the path (column 11, lines 12-45; column 25, lines 39.

Regarding **claim 6**, Geiger discloses a method for controlling distribution of electronic mail messages communicated from a sender to a receiver via a communications network, the method comprising the steps of:

- (a) receiving a message intended for delivery to a recipient (col. 5, lines 58-67; col. 6, lines 15-50);
- (b) identifying a priority level corresponding to the message (column 10, lines 44-62);
- (c) identifying a prescribed delay for the identified priority level (column 11, lines 12-45);
- and
- (d) delivering the message to the intended recipient after the prescribed delay (column 11, lines 12-45).

Regarding **claim 8**, Geiger discloses the method of claim 1 , wherein step (b) comprises the steps of:

- (e) identifying a communications path of the message (col. 5, lines 58-67; col. 6, lines 15-50);

Art Unit: 2143

(f) identifying the priority level for the identified communications path (column 10, lines 44-62).

Regarding **claim 9**, Geiger discloses the method of claim 8, wherein step (f) comprises referencing stored data associating the communications path with the priority level (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 10**, Geiger discloses the the method of claim 2, wherein the sender specifies the priority level by selecting the priority level to be assigned to the message from a menu of priority levels displayed to the sender via a graphical user interface (fig. 21, item 2100).

Regarding **claim 11**, Geiger discloses the method of claim 2, wherein the priority level is a predetermined priority level to be assigned to a plurality of messages originating from the sender (column 23, lines 37-67).

Regarding **claim 12**, Geiger discloses the method for controlling distribution of network communications via a communications network, the method comprising: identifying a plurality of network communications, each being intended for delivery to a respective recipient, each having a respective priority level (fig. 13; (column 10, lines 44-62); causing delivery of the plurality of network communications to the respective recipients in an order corresponding to the respective priority levels, wherein certain of the plurality of network communications having a relatively high priority level are delivered before certain of the plurality of network communications having a relatively low priority level (column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 13**, Geiger discloses a method for controlling distribution of network communications via a communications network, the method comprising; identifying a plurality of network communications, each being intended for delivery to a respective recipient, each having a respective priority level (fig. 13; (column 10, lines 44-62); delaying allocation of a network connection for a network communication having a relatively low priority level until after allocation of the network connection for another network communication having a priority level higher than the relatively low priority level (column 11, lines 7-62).

Regarding **claim 14**, Geiger discloses a method for controlling distribution of network communications via a communications network, the method comprising; identifying a plurality of network communications, each having a respective priority level, and a respective network path (fig. 13; (column 10, lines 44-62); selectively delaying allocation of a network connection for delivering a network communications having a certain path until after utilization of network resources no longer exceeds a predetermined threshold (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 15**, Geiger discloses the method for controlling distribution of network communications via a communications network, the method comprising; identifying a plurality of network communications, each having a respective priority level, and a respective source address (fig. 13; (column 10, lines 44-62);

Art Unit: 2143

referencing a list of preferred customers' e-mail domains (column 18, lines 60-67; column 19, lines 1-23); and  
delaying a network communication having a source address that does not correspond to any e-mail domain on the list until after transmission of another network communication having a respective source address that does correspond to an e-mail domain on the list (column 18, lines 60-67; column 19, lines 1-51).

Regarding **claim 16**, Geiger discloses the method for controlling distribution of network communications via a communications network, the method comprising:  
sampling network communications received from a certain sender to determine a level of network communications having a certain characteristic (column 19, lines 52-67; column 20, lines 1-20; column 23, lines 5-36);  
determining a priority level as a function of the level; and  
assigning the priority level to other network communications received from the certain sender (column 19, lines 52-67; column 20, lines 1-20; column 23, lines 5-36);.

Regarding **claim 18**, Geiger discloses the method of claim 16, wherein the characteristic comprises undeliverability of network communication to a respective receiver (column 5, lines 42-67; column 6, lines 1-57).

Regarding **claim 21**, Geiger discloses an apparatus for controlling distribution of network communications via a communications network, the apparatus comprising:  
means for identifying a respective priority for each of a plurality of network communications (column 19, lines 52-67; column 20, lines 1-20);  
means for allocating network connections for delivery of network



Art Unit: 2143

communications, said means being configured to provide a prioritization effect whereby connections are allocated for delivery of said plurality of network communications in an order corresponding to respective priorities of said plurality of network communications, a network communication having a relatively high priority being allocated a network connection before another network communication having a relatively low priority (column 19, lines 52-67; column 20, lines 1-58).

Regarding **claim 22**, Geiger discloses the apparatus of claim 21, whereby said means for allocating network connections provides unnecessary delay for allocation of a network connection for a network communication having a relatively low priority to permit allocation of said network connection for delivery of a network communication having a relatively high priority (column 19, lines 52-67; column 20, lines 1-58)..

Regarding **claim 23**, Geiger discloses the apparatus of claim 21, wherein said delay is provided for any network communications having a certain priority (column 19, lines 52-67; column 20, lines 1-58)..

Regarding **claim 24**, Geiger discloses the apparatus of claim 21, wherein said delay is provided for any network communication received along a certain network path (fig. 13; (column 10, lines 44-62);

Regarding **claim 25**, Geiger discloses the apparatus of claim 21, wherein said delay is provided for any network communication originating from a certain sender (column 18, lines 60-67; column 19, lines 1-51).

Regarding **claim 26**, Geiger discloses the apparatus of claim 21 , wherein said delay is provided for any network communication when utilization of network resources exceeds a predetermined threshold (column 18, lines 60-67; column 19, lines 1-51).

Regarding **claim 27**, Geiger discloses a system for controlling distribution of network communications via a communications network, the system comprising; a mail server capable of processing network communications (column 5, lines 42-67; column 7, lines 4-30; fig. 1, items 102, and 106); a device capable of determining a respective priority for each of a plurality of network communications (fig. 2, item 230; column 10, lines 32-63); and a device capable of allocating network connections for delivery of network communications, said device being specially configured to allocate network connections to provide a prioritization effect whereby a network communication having a relatively high priority is allocated a certain network connection before another network communication having a relatively low priority (column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 28**, Geiger discloses the system of claim 27, wherein said mail server is specially configured with software to act as said device capable of determining the respective priority for each of the plurality of network communications (column 5, lines 42-67; column 7, lines 4-30; fig. 1, items 102, and 106).

Regarding **claim 29**, Geiger discloses the system of claim 27, wherein device capable of allocating network connections comprises a hardware appliance distinct from said mail server (fig. 2, item 230; column 10, lines 32-63).

Regarding **claim 30**, Geiger discloses a network appliance for controlling distribution of network communications via a communications network, the network appliance comprising;

a heuristic engine for identifying a network path for each of a plurality of network communications received by the network appliance, and for sampling a subset of the plurality of network communications, each network communication of the subset having a common network path (fig. 2, items 220, and 230);

a scanner for scanning each network communication of the subset and for determining a value for a sender metric for the network communications of the subset (fig. 3, item 287; column 8, lines 14-67);

a rules database storing rules for delivering network communications, at least one of the rules correlating the value to a priority level; and

a connection processor for allocating network connections for delivery of network communications, the connection processor being configured to allocate network connections for certain network communications in an order of priority corresponding to the certain network communications' respective priority levels, wherein each network communication's respective priority level is assigned according to its respective network path, and the priority level assigned to the subset of network communications having an identical network path (column 8, lines 14-67; fig. 1, item 102, and 106; column 9, lines 4-67; column 10, lines 1-63).

Regarding **claim 31**, Geiger discloses the network appliance of claim 30, further comprising a notification module, the notification module being capable of

communicating to another network appliance (fig. 4A, item 410; column 5, lines 42-67; column 6, lines 1-57).

Regarding **claim 32**, Geiger discloses the network appliance of claim 30, wherein the notification module is configured to communicate via the communications network (fig. 4A, item 410; column 5, lines 42-67; column 6, lines 1-57).

Regarding **claim 33**, Geiger discloses the network appliance of claim 31, wherein the notification module is configured to communicate priority level information for a corresponding network path (fig. 13; (column 10, lines 44-62).

Regarding **claim 34**, Geiger discloses the network appliance of claim 31 , wherein the notification module is configured to communicate a preference to delay network communications.

Regarding **claim 35**, Geiger discloses the network appliance of claim 31 , wherein the notification module is configured to communicate a request to reduce a volume of network communications directed to the network appliance (column 7, lines 4-67; column 8, lines 1-59).

Regarding **claim 36**, Geiger discloses the network appliance of claim 30, wherein the sampling is performed according to a predetermined sampling rate (column 4, lines 21-39; column 23, lines 5-36).

Regarding **claim 37**, Geiger discloses the network appliance of claim 36, wherein the predetermined sampling rate is stored in the rules database (column 3, lines 5-36).

Regarding **claim 38**, Geiger discloses the network appliance of claim 30, wherein the sampling rate is varied over time (fig. 3, item 287; column 8, lines 14-67).

Regarding **claim 44**, Geiger discloses the network appliance of claim 30, wherein the rules database further comprises a prescribed delay corresponding to the priority level (column 11, lines 7-62).

Regarding **claim 45**, Geiger discloses the network appliance of claim 44, wherein the prescribed delay comprises a fixed period of time (column 11, lines 7-62).

Regarding **claim 46**, Geiger discloses the network appliance of claim 44, wherein the prescribed delay comprises delay until network resource availability reaches a certain level (column 11, lines 7-62).

Regarding **claim 47**, Geiger discloses a method for controlling distribution of network communications via a communications network, the method comprising: tracking a number of inbound connections for each of a plurality of communications hosts (column 11, lines 3-61), and altering a connection build process for a certain of said plurality of communications hosts to control a flow of said certain host's network communications

Regarding **claim 48**, Geiger discloses the method of claim 47, wherein the connection build process relates to a TCP connection (column 17, lines 3-61).

Regarding **claim 49**, Geiger discloses the method of claim 47, wherein the connection build process relates to an SMTP connection (column 6, lines 15-57).

Regarding **claim 50**, Geiger discloses the method of claim 47, wherein altering the connection build process comprises slowing the connection build process for said certain host (column 6, lines 15-57; column 17, lines 3-61).

Regarding **claim 51**, Geiger discloses the method of claim 47, wherein altering the connection build process comprises stopping the connection build process for said certain host (column 17, lines 3-61).

Regarding **claim 52**, Geiger discloses a system for controlling distribution of network communications via a communications network, the system comprising a mail server operating within an internal communications network for distribution of incoming network communications received via an external communications network (column 5, lines 42-67; column 7, lines 4-30; fig. 1, items 102, and 106); and a network appliance logically positioned between the mail server and the external communications network, the network appliance being specially configured to selectively allocate resources of the internal communications network for delivery of the incoming network communications to the mail server, the network appliance being further configured to allocate resources to the incoming network communications in a prioritized manner (fig. 2, item 230; column 10, lines 32-63).

Regarding **claim 53**, Geiger discloses the method of claim 52, wherein the prioritized manner provides for allocation of resources to an incoming network communication that provides for delivery of higher priority network communications before lower priority network communications (column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 54**, Geiger discloses the method of claim 53, wherein the allocation of resources comprises allocation of network connections (column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 55**, Geiger discloses a network appliance for controlling distribution of network communications via a communications network, the network appliance receiving incoming network communication connections, the network appliance being capable of allocating network connections for delivering network communications, the network appliance selectively allocating network connections for each of a plurality of network communications in an order to achieve a prioritization effect (fig. 2, item 230; column 10, lines 32-63; column 10, lines 44-62).

Regarding **claim 56**, Geiger discloses the network appliance of claim 55, the prioritization effect comprising delaying allocation of a network connection for delivery of a first network communication having a first priority, and allocation of the network connection for delivery of a second network communication having a second priority higher than the first priority, allocation of the network connection for delivery of the second network communication being performed before allocation of the network communication for delivery of the first network communication (column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 57**, Geiger discloses the network appliance of claim 55, the prioritization effect comprising allocating a network connection for delivery of a relatively high priority network communication before allocating the network connection for delivery of a relatively low priority network communication (column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 58**, Geiger discloses the network appliance of claim 55, the prioritization effect comprising delaying allocation of a network connection for a given

Art Unit: 2143

path to meet predetermined preference criteria (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 59**, Geiger discloses the network appliance of claim 55, wherein the predetermined preference criteria provides that network communications from a certain path should not be delivered if utilization of network resources presently exceeds a predetermined threshold (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 60**, Geiger discloses the network appliance of claim 55, wherein the predetermined preference criteria provides that network communications from a certain sender should not be delivered if utilization of network resources presently exceeds a predetermined threshold (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 61**, Geiger discloses the network appliance of claim 55, wherein the predetermined preference criteria provides that network communications having a certain priority level should not be delivered if utilization of network resources presently exceeds a predetermined threshold (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 62**, Geiger discloses a method for controlling distribution of network communications from a sender to a receiver via a communications network, the method comprising the steps of:

identifying a network communication intended for delivery to a recipient (col. 5, lines 58-67; col. 6, lines 15-50);

identifying a priority level corresponding to the network communication (column 10, lines 44-62);



Art Unit: 2143

determining a prescribed delay for the identified priority level(column 11, lines 12-45);  
and

delaying delivery of the network communication to the intended recipient according to  
the prescribed delay (column 11, lines 12-45).

Regarding **claim 63**, Geiger discloses the method of claim 62, wherein the  
identifying, determining and delaying are performed by a network appliance capable of  
communicating via the communications network, the network appliance being logically  
positioned between the sender and the receiver (column 11, lines 7-62).

Regarding **claim 64**, Geiger discloses the method of claim 62, wherein  
identifying the priority level comprises identifying a network address of a mail system of  
the sender from which the network communication originated (column 23, lines 5-67).

Regarding **claim 65**, Geiger discloses the method of claim 62, wherein  
identifying the priority level comprises identifying a network address of a mail system of  
an intermediary along a network path from the sender to the receiver (column 23, lines  
5-67).

Regarding **claim 66**, Geiger discloses the method of claim 62, wherein  
identifying the priority level comprises identifying a domain name of the a mail system of  
the sender from which the network communication originated (column 23, lines 5-67).

Regarding **claim 67**, Geiger discloses the method of claim 62, wherein  
identifying the priority level comprises identifying a domain name of a mail system of an  
intermediary along a network path from the sender to the receiver (column 23, lines 5-  
67).

Regarding **claim 68**, Geiger discloses the method of claim 62, wherein identifying the priority level comprises identifying network path information found in a header of the network communication (column 17, lines 16-43).

Regarding **claim 69**, Geiger discloses the method of claim 68, wherein identifying the network path information comprises referencing TCP or IP packet headers of the network communication (column 17, lines 3-61).

Regarding **claim 70**, Geiger discloses the method of claim 62, wherein identifying the priority level comprises identifying network path information of a mail system having previously processed the network communication (fig. 13; (column 10, lines 44-62).

Regarding **claim 71**, Geiger discloses the method of claim 62, wherein identifying the priority level comprises identifying network path information of a mail system having previously routed the network communication (fig. 13; column 10, lines 44-62).

Regarding **claim 72**, Geiger discloses the method of claim 62, wherein identifying the priority level comprises identifying a sender identity domain associated with the sender of the network communication (col. 5, lines 58-67; col. 6, lines 15-50).

Regarding **claim 73**, Geiger discloses the method of claim 62, wherein identifying the sender identity domain comprises referencing SMTP header information of the network communication (column 6, lines 15-57).

Regarding **claim 74**, Geiger discloses the method of claim 62, wherein identifying the priority level comprises identifying a geographic origin of the network communication (column 23, lines 5-67).

Regarding **claim 75**, Geiger discloses the method of claim 62, wherein the prescribed delay is established according to a recorded preference of the receiver (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 76**, Geiger discloses the method of claim 62, wherein the prescribed delay is established according to a preference of an intermediary, the intermediary being logically positioned between the sender and the receiver for transmitting network communications from the sender to the receiver (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 77**, Geiger discloses the method of claim 62, wherein delaying delivery of the network communication comprises controlling allocation of network connections for delivery of network communications to cause other network communications having priority levels higher than the network communication to be delivered before delivery of the network communication (column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 78**, Geiger discloses a method for controlling distribution of network communications via a communications network, the method comprising: identifying a plurality of network communications, each having a respective priority level (column 10, lines 44-62); allocating network connections for delivery of network communications to

Art Unit: 2143

allocate network connections as a function of a respective priority level of each of the plurality of network communications(column 10, lines 44-62).

Regarding **claim 79**, Geiger discloses the method of claim 78, wherein said allocating comprises allocating a network connection to a certain network communication having a first priority level before allocating the network connection to another network communication having a second priority level lower than the first priority level (column 10, lines 44-62).

Regarding **claim 80**, Geiger discloses the method of claim 78, wherein said allocating comprises delaying transmission of a certain network communication having a first priority level until after transmission of another network communication having a second priority level higher than the first priority level (column 10, lines 44-62).

Regarding **claim 81**, Geiger discloses the method of claim 78, wherein said allocating comprises causing delivery of a certain network communication having a first priority level to occur after delivery of another network communication having a second priority level higher than the first priority level (column 10, lines 44-62).

Regarding **claim 82**, Geiger discloses a system for controlling distribution of network communications via a communications network, the system comprising a mail server operating within an internal communications network for distribution of incoming network communications received via an external communications network (column 5, lines 42-67; column 7, lines 4-30; fig. 1, items 102, and 106); and

Art Unit: 2143

a network appliance logically positioned between the mail server and the external communications network, the network appliance being specially configured to selectively allocate resources of the internal communications network for delivery of the incoming network communications to the mail server, the network appliance being further configured to allocate resources to the incoming network communications to ensure that network communications received along a certain network path are delivered at a rate that consumes no more than a certain percentage of the resources of the internal communications network (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 83**, Geiger discloses the system of claim 82, wherein the certain percentage is established by a predetermined preference setting (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 84**, Geiger discloses the system of claim 83, wherein the preference setting is established by the receiver (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 85**, Geiger discloses a network appliance for controlling distribution of network communications via an external communications network for delivery within an internal communications network, the network appliance being specially configured to selectively allocate resources of the internal communications network that may be used for delivery of network communications, the resources being selectively allocated to ensure that network communications received along a certain network path are delivered at a rate that consumes no more than a certain percentage

Art Unit: 2143

of the resources of the internal communications network (column 11, lines 12-45; column 25, lines 39-67; fig. 3, items 291, and 292).

Regarding **claim 86**, Geiger discloses the system of claim 85, wherein the certain percentage is established by a predetermined preference setting (column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 87**, Geiger discloses the system of claim 86, wherein the preference setting is established by the server (column 11, lines 12-45; column 25, lines 39-67).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 17, 19, 20, and 39-43** are rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger in view of Aronson et al (Aronson), U.S. Patent No: 6,654,787 B1.

Regarding **claim 17**, Geiger teaches the invention substantially as claimed. Geiger fully discloses the method of controlling distribution of claim 16. However, Geiger does not specifically disclose the method of claim 16, wherein the characteristic comprises containing of a virus.

Art Unit: 2143

In the same field of endeavor, Aronson discloses "...a filter module in a communication controller that performs a virus check on incoming email messages..." [see Aronson], column 5, lines 50-67].

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Aronson's teachings filtering emails for virus, with the teachings of Geiger, for the purpose of "*sorting messages....based on rules ...and forwarding messages sorted into one of the groups to the client ...*" as stated by Geiger in lines 29-33 of column 2. By this rationale **claim 17** is rejected.

**Regarding claim 19**, the combination of Geiger-Aronson discloses the method of claim 16, wherein the characteristic comprises characterization of network communication as spam [see Geiger, column 5, lines 20-67]. The same motivation that was used for claim 17 is also valid for claim 19 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 19** is rejected.

**Regarding claim 20**, the combination of Geiger-Aronson discloses the method of claim 19, wherein characterization of the network communication as spam is determined according to a pattern matching technique [see Geiger, column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 20 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 20** is rejected.

**Regarding claim 39**, the combination of Geiger-Aronson discloses the network appliance of claim 30, wherein the sender metric comprises a virus rate indicating a percentage of the network communications of the subset that carry a virus [see Geiger,

Art Unit: 2143

column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 39 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 39** is rejected.

**Regarding claim 40**, the combination of Geiger-Aronson discloses the network appliance of claim 30, wherein the sender metric comprises a delivery success rate indicating the percentage of the network communications of the subset that are delivered [see Geiger, column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 40 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 40** is rejected.

**Regarding claim 41**, the combination of Geiger-Aronson discloses the network appliance of claim 30, wherein the sender metric comprises a spam rate indicating a percentage of the network communications of the subset that are determined to be unwanted [see Geiger, column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 41 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 41** is rejected.

**Regarding claim 42**, the combination of Geiger-Aronson discloses the network appliance of claim 41, wherein the determination of whether a certain network communication is unwanted is determined by content-based analysis [see Geiger, column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 42 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 42** is rejected.

**Regarding claim 43**, the combination of Geiger-Aronson discloses the network appliance of claim 41, wherein the determination of whether a certain network communication is unwanted is determined by pattern matching [see Geiger, column 2,



Art Unit: 2143

lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 43 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 43** is rejected.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3719.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Jude Jean-Gilles

Patent Examiner

Art Unit 2143

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September 22, 2005



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